

APPEAL NO. 010342

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on January 26, 2001. The hearing officer resolved the two disputed issues by determining that the respondent (claimant) sustained a compensable injury on _____, and that she had disability from June 24 through July 23, 2000. The appellant (self-insured) has requested our review of these determinations for evidentiary sufficiency. The claimant responds that the evidence is sufficient to support the challenged determinations.

DECISION

Affirmed.

The hearing officer did not err in finding that the claimant sustained a low back injury in the course and scope of her employment on _____, and that she had disability from June 24 through July 23, 2000. The claimant testified that on _____, while seated on a toilet in a handicapped stall at work, roaches from above fell into her pants and scared her; that when she jumped up from the toilet in fright, her slacks caught under her shoe heels and she fell against the right-side handrail and slid down against the toilet and onto the floor; that while on the floor she saw a roach crawling towards her and she attempted to rise but slid again with her back striking the toilet; and that she was able to extricate herself and flee from the bathroom. The claimant said she immediately reported this event to her supervisor Ms. M; that she was seen that day by an employer's provider, who took her off work for the remainder of the day; that, subsequently, she commenced treatment with her own doctor, who kept her off work; that in late July 2000 she changed doctors to Dr. T, who has yet to release her for work; and that she nevertheless commenced new employment, effective July 24, 2000, because she needs the money. Although Ms. M testified that the claimant did indeed report the injury she sustained in the bathroom, she maintained that the claimant was considered to have abandoned her job for not calling in for three days and therefore her employment was terminated; and that the claimant could have returned to work earlier because she interviewed for other jobs before starting her new job on July 24, 2000.

Dr. T's initial report of July 28, 2000, states that the diagnosis of lumbar disc disorder, lumbar neuritis/radiculitis, sciatica, and muscle spasm is, within medical probability, related to the claimant's work-related injury of _____. Dr. P's record of June 26, 2000, states that the claimant is to be off work five days and is then released for limited duty for two weeks, and that this estimation may need to be reviewed at her follow-up visit. Another doctor's slip, barely legible, dated "7/3/00," appears to state that the claimant is to refrain from work until after a follow-up appointment.

The claimant had the burden to prove that she sustained the claimed injury and that she had disability as that term is defined in Section 401.011(16). Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. The Appeals Panel

has stated that in workers' compensation cases, the disputed issues of injury and disability can, generally, be established by the lay testimony of the claimant alone. Texas Workers' Compensation Commission Appeal No. 91124, decided February 12, 1992. However, the testimony of a claimant, as an interested party, only raises issues of fact for the hearing officer to resolve and is not binding on the hearing officer. Texas Employers Insurance Association v. Burrell, 564 S.W.2d 133 (Tex. Civ. App.-Beaumont 1978, writ ref'd n.r.e.). The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). As an appellate-reviewing tribunal, the Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

Philip F. O'Neill
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Susan M. Kelley
Appeals Judge